

# CONTRACT

This Contract is made this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by and between the State of Maryland (the "State") and Concentra Health Services, Inc., doing business as Concentra Medical Centers, a Nevada corporation (the "Contractor"), having its principal place of business at 5080 Spectrum Drive, Suite 400, West Tower, Addison, Texas 75001-4648.

In consideration of the mutual covenants and promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Department and the Contractor agree as follows:

1. Definitions. All capitalized terms that are not defined herein shall have the meanings provided in the Request for Proposal F10R0200273.

2. Scope of Contract.

2.1 The Contractor shall provide support services as described in the Contractor's proposal in accordance with the terms and conditions of this Contract and the Exhibits attached to this Contract and incorporated as part of this Contract:

**Exhibit A:** RFP F10R0200273, as amended by:

- (1) Addendum #1, dated 3/14/00
- (2) Addendum #2, dated 3/17/00
- (3) Addendum #3, dated 4/20/00
- (4) Memo of 4/17/00 entitled Responses to Concentra's Exceptions
- (5) Letter of 4/21/00 to Dr. Cheung from Margaret Embardino
- (6) Letter of 5/1/00 to Dr. Cheung from Joel Leberknight
- (7) Letter of 5/3/00 to Dr. Cheung from Margaret Embardino

**Exhibit B:** The Contractor's Technical Proposal dated 3/31/00, as amended by:

- (1) Letter dated 4/18/00 to Margaret Embardino from Dr. Cheung
- (2) One-Page Letter dated 5/1/00 to Margaret Embardino from Mary Beth Ripley
- (3) Two-Page Letter dated 5/1/00 with attachments to Margaret Embardino from Mary Beth Ripley
- (4) Fax transmittal dated 3/14/00 to Frederick Ramsey from Dr. Cheung
- (5) Fax transmittal dated 4/24/00 to Joel Leberknight from Dr. Cheung

**Exhibit C:** The Contractor's Financial Proposal dated 3/31/00, as amended by:

- (1) Fax transmittal dated 4/24/00 to Joel Leberknight from Dr. Cheung
- (2) Letter of 5/3/00 to Dr. Cheung from Margaret Embardino

2.2 If there are any inconsistencies between the Contract and any of the Exhibits, the terms of this Contract shall prevail. If there are any inconsistencies between any of the Exhibits, the terms of Exhibit A, as amended, shall prevail.

2.3 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of a written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

3. Time For Performance. The term of this Contract shall be for the period beginning June 1, 2000 through May 31, 2003, with the right of the State to exercise up to 2 additional one-year extensions, or extensions on a month-to-month basis for up to 6 additional months, under the same terms and conditions as the original Contract, including all prices.

#### 4. Consideration and Payment

4.1 The Contractor shall be paid for services rendered at the respective per examination or case fees or hourly rate specified in the Contractor's financial proposal as amended and itemized in Item 2.1.

4.2 Payments to the Contractor pursuant to this Contract shall be made no later than thirty (30) days after the acceptance of the support services and receipt of a proper invoice from the Contractor. Contractor may only bill the State for periods of at least 30 calendar days. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, are prohibited.

4.3 In addition to any other available remedies, if in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer in accordance with this Contract. The final Contract payment will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

5. Assigned Personnel. Contractor agrees that all personnel identified in its proposal shall be available for the term of the Contract, including any extension(s), unless such personnel are no longer employed by the Contractor.

6. Warranties. The Contractor hereby represents and warrants that:

- (a) It is qualified to do business in the State of Maryland and that it will take such action as, from time to time, may be necessary to remain so qualified;
- (b) It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- (c) It shall comply with all federal, State and local laws applicable to its activities and obligations under this Contract;
- (d) It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

7. Rights to Records.

7.1 The Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, tests, computer software, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor for purposes of performing work on this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

7.2 The Contractor agrees that at all times during the term of this Contract and thereafter, the works created and services performed shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created under this Contract are not works for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

7.3 The Contractor shall report to the State, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this agreement.

7.4 The Contractor shall not affix any restrictive markings upon any data and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such markings.

7.5 Upon termination of this Contract, the Contractor shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

8. Non-hiring of Employees. No employee of the State of Maryland or any unit hereof whose duties as such employee include matters relating to or affecting the subject matter of this Contract shall, while so employed, become or be an employee of the Contractor.

9. Disputes. This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer’s decision.

Unless a lesser period is provided by applicable statute, regulation, or this Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

10. Maryland Law. The place of performance of this Contract shall be the State of Maryland. This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

11. Amendments. Except as provided in section 2, any amendment to this Contract must first be approved in writing by the Procurement Officer, subject to any additional approvals required by State law.

12. Non-discrimination in Employment. The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental disability unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

13. Contingent Fee Prohibition. The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the Contractor to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide salesperson, or commercial selling agency, any fee or other consideration contingent on the making of this agreement.

14. Non-availability of Funding. If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal year of this Contract succeeding the first fiscal year, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

15. Termination for Cause. If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can

affirmatively collect damages. Termination hereunder, including rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11 B.

16. Termination for Convenience. The performance of work under this Contract may be terminated by the State in accordance with this clause in whole or, from time to time, in part whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12(A)(2).

17. Delays and Extensions of Time. The Contractor agrees to perform this agreement continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under this Contract. Time extensions may be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a State contract, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or the delay of a subcontractor or supplier arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractor or supplier. Liquidated damages shall be assessed as provided in Paragraph 18.

18. Liquidated Damages. Time is an essential element of this Contract and it is important that the work be vigorously prosecuted until completion. For each day that any work remains uncompleted beyond the time(s) specified elsewhere in the Contract, the Contractor shall be liable for liquidated damages. The Contractor shall deliver to each DAC the results of the services requested within the time specified in Section 4, Scope of Services, of this RFP. Failure to comply will result in liquidated damages of \$155.00 per day per employee.

The employee is the employee who is referred for an examination or evaluation. As determined by the DAC and/or the State Contract Monitor, the DAC will deduct \$155.00 per day from the fee charges by the contractor each time the final written report is not received within the time specified in the RFP. The fine will be deducted each day until the report is received. Financial damages will be deducted from the contractor's bill for services provided on the subsequent month's payment.

The imposition of financial damages begins on the date (as determined by the DAC and/or State Contract Monitor) when the contractor has all of the information and documentation deemed necessary to make a determination, but the contractor is late in delivering a final written report. Allowances will be made for Acts of God and forces majeure (i.e., electrical outages, weather emergencies) that are truly beyond the contractor's control, as determined by the DAC and/or the State Contract Monitor.

Time is computed in accordance with Article 1, §36 of the Annotated Code of Maryland. For the purposes of this contract, the time period ends at 5:00 p.m. (the close of business) on the fifth working day after the service is provided.

19. **Suspension of Work.** The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

20. **Pre-existing Regulations.** In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of COMAR in effect on the date of execution of this Contract are applicable to this Contract.

21. **Financial Disclosure.** The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information, to include disclosure of beneficial ownership of the business.

22. **Political Contribution Disclosure.** The Contractor shall comply with Article 33, Sections 30-1 through 30-4 of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Administrative Board of Election Laws: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

23. Retention of Records. The Contractor shall retain and maintain all records and documents relating to this Contract for three (3) years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times.

24. Liability for Loss of Data. In the event of loss of any data or records necessary for the performance of this Contract, which such loss is due to the error or negligence of the Contractor, the Contractor shall be responsible, irrespective of cost to the Contractor, for recreating all such lost data or records in a manner, format, and time-frame acceptable to the Department.

25. Cost and Price Certification. By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of May 3, 2000. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of May 3, 2000, was inaccurate, incomplete, or not current.

26. Subcontracting and Assignment. The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State, nor may the Contractor assign this Contract, or any of its rights or obligations hereunder, without the prior written approval of the State. Any such subcontract or assignment shall be subject to any terms and conditions that the Department deems necessary to protect the interest of the State. The Department shall not be held responsible for the fulfillment of the Contractor's obligations to subcontractors.

27. Indemnification.

27.1 The Contractor shall indemnify and hold the State harmless for any costs, expenses, losses, liabilities, suits, actions, claims, fines or penalties of any nature or character whatsoever that the State may incur as a result of: (a) failure of the Contractor and its employees, agents, subcontractors and suppliers at any tier and their employees and agents, to comply with the terms of this Agreement; or (b) negligence, injury or death to any person, damage to property, nuisance (public or private), or trespass arising out of or by the Contractor, and its employees, agents, subcontractors and suppliers at any tier and their employees and agents, except to the extent caused solely by the negligent or willful act or omission of the State or its employees.

27.2 The Contractor further agrees to indemnify the State for damage, loss, or destruction of all State property in the Contractor's care, custody, and control throughout the term of this agreement.



27.3 The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

27.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

27.5 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract.

28. Good Faith In Dealing With The State. The Contractor agrees to deal in good faith with the State in all matters. Dealing in good faith with the State includes (but is not limited to):

- a. Attempting to resolve disputes amicably and promptly;
- b. Not misleading the Procurement Officer or other State employee(s);
- c. Not making representations which are untrue and not making promises which are not kept;
- d. Not filing claims or protests which are frivolous or clearly without foundation;
- e. Filing protests in a timely manner; and
- f. Providing prices, which are fair, reasonable, and balanced.

29. Notices. All notices required to be given by one party to the other hereunder shall be in writing and shall be addressed as follows:

If to the Department:

Joel Leberknight  
State of Maryland  
Department of Budget & Management  
45 Calvert Street, Room 137  
Annapolis, MD 21401

If to the Contractor:

In Witness whereof, the parties have signed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
State of Maryland

\_\_\_\_\_  
Contractor

Reviewed for form and legal sufficiency this 3rd day of May, 2000.

\_\_\_\_\_  
David R. Durfee, Jr.